

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JAVIER TAMES, Individually and on behalf of
all others similarly situated,

Plaintiff,

v.

DESARROLLADORA HOMEX, S.A.B. DE
C.V. a/k/a HOMEX DEVELOPMENT CORP.,
GERARDO DE NICOLÁS GUTIÉRREZ, and
CARLOS MOCTEZUMA VELASCO,

Defendants.

Case No. 1:17-cv-01416-ADS-ARL

**DECLARATION OF ADAM M.
APTON IN RESPONSE TO COURT
NOTICE (DKT. NO. 19)**

I, ADAM M. APTON, hereby declare that:

1. I am a partner of the law firm Levi & Korsinsky, LLP, attorneys for Lead Plaintiff Jose Acosta and Lead Counsel for the Class in the above-captioned action (the “*Tames* Action”). I am admitted to practice before this Court and have personal knowledge of the various matters set forth herein based on my day-to-day participation in this matter. I submit this Declaration in response to the Court’s Notice, dated March 5, 2020, directing Lead Counsel to show cause why an order should not be entered dismissing the action for failure to prosecute pursuant to Rule 41(b) (Dkt. No. 19) (hereinafter the “Order”).

2. After the Court in the *Acosta* Action (which is a related matter asserting substantially similar claims pending in the U.S. District Court for the Southern District of California¹) granted Lead Plaintiff’s motion for alternative service, Lead Plaintiff effected service on the corporate defendant through counsel, Desarrolladora Homex, S.A.B. De C.V. a/k/a Homex Development Corp. (“Homex”).

¹ I described the *Acosta* Action in additional detail in the Declaration of Adam M. Apton, ¶3 (Dkt. No. 17).

3. In mid- to late-2019, Lead Plaintiff and Homex began settlement negotiations to resolve claims against Homex. These settlement negotiations have been ongoing but are likely to conclude favorably within the next thirty (30) days. Barring any unforeseen disruptions in the negotiations, Lead Plaintiff anticipates filing a motion for preliminary approval of a partial settlement by April 15, 2020. The settlement negotiations with Homex have been relatively complicated given Homex's current financial situation, which Lead Plaintiff intends to elaborate upon in his forthcoming motion for preliminary approval in accordance with Rule 23.

4. The individual defendants, Gerardo de Nicolas Gutierrez, Carlos Moctezume Velasco, and Ramon Lafargas Batiz, have not yet appeared or answered Lead Plaintiff's complaint, despite service being completed. Lead Plaintiff will assess his options with respect to the individual defendants if and when the settlement with Homex is approved.

5. Lead Plaintiff respectfully requests additional time to resolve this matter as outlined above. The delays that have taken place to date are largely related to the parties' collective attempts to conserve resources and increase efficiency in what is normally a complicated process both procedurally and factually.

I declare under the penalty of perjury that the foregoing is true to the best of my knowledge.

Executed this 16th day of March 2020.

/s/ Adam Apton
Adam M. Apton

SO ORDERED

/s/ Arthur D. Spatt

USAf

3/18/2020